American Concept Company *and* International Brotherhood of Electrical Workers, Local Union No. 584, AFL–CIO. Cases 17–CA–16934 and 17–CA–16997

March 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

Upon charges and amended charges filed by the International Brotherhood of Electrical Workers, Local Union No. 584, AFL–CIO (the Union) on September 1, October 6, and November 22, 1993, the General Counsel of the National Labor Relations Board issued a consolidated complaint in the above cases on November 30, 1993, against American Concept Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.

Thereafter, on September 20, 1994, the Regional Director approved an informal settlement agreement entered into by the Respondent and the Union in disposition of the consolidated complaint. However, on December 15, 1994, the Regional Director issued an order revoking approval of, vacating and setting aside the settlement agreement, and a new consolidated complaint realleging the same allegations contained in the original consolidated complaint, on the ground that the Respondent had failed to comply with the settlement agreement.

Although properly served copies of the December 15, 1994 consolidated complaint, the Respondent failed to file an answer thereto. Accordingly, on February 21, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On February 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the December 15, 1994 consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 9, 1995, notified the Respondent that unless an answer were received by close of business January 25, 1995, a Motion for Summary Judgment would be filed. Nevertheless, as indicated above, the Respondent failed to file an answer to the December 15, 1995 consolidated complaint.[1]

Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the December 15, 1994 consolidated complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a sole proprietorship owned by Ron Allison, with an office and place of business in Mustang, Oklahoma, has been engaged as an electrical contractor in the construction industry doing commercial construction at various jobsites in the State of Oklahoma. During the 12-month period ending September 30, 1993, the Respondent, in conducting its business operations, purchased and received at its Mustang, Oklahoma facility goods valued in excess of $50,000 directly from points outside the State of Oklahoma.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about September 1, 1993, at a jobsite located at Pine and Sheridan in Tulsa, Oklahoma, the Respondent informed employees that engaging in protected, concerted activity would result in their discharge.

On about September 3, 1993, at a jobsite located at Pine and Sheridan in Tulsa, Oklahoma, and on about September 17, 1993, at a jobsite located at 15th and Lewis in Tulsa, Oklahoma, the Respondent informed employees that other employees had been terminated

[1] Although the Respondent filed an answer to the original complaint issued on October 8, 1993, in Case 17–CA–16934, the answer was withdrawn by the terms of the settlement agreement. We take administrative notice that the settlement form used by the parties was NLRB Form 4775, the standard informal settlement agreement, which expressly provides that approval of the settlement agreement "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response." (Emphasis added.) Thus, the Respondent's answer does not remain extant and does not preclude summary judgment. See *Signage Systems*, 312 NLRB 1115 (1993); *Ofalco Properties*, 281 NLRB 84 (1986); and *Orange Data, Inc.*, 274 NLRB 1018 (1985).

and notify them in writing that this has been done and that the action will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Mustang, Oklahoma, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1995

William B. Gould IV,	Chairman
Charles I. Cohen,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT inform employees that engaging in protected, concerted activity will result in their discharge, that other employees have been terminated because of their participation in protected, concerted activities, or that honoring a strike or participating in protected, concerted activities will result in termination.

WE WILL NOT discharge or refuse to reinstate employees because they engaged in union or other protected concerted activities or because we believe that the employees engaged in union activities.

WE WILL NOT fail and refuse to reinstate unfair labor practice strikers to their former positions of employment upon their unconditional offer to return to work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer immediate and full reinstatement to John Bell, Larry Crouse, Gene Sheppard, and Roy Sheppard to their former positions of employment, or if those positions no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL remove from our files any references to the unlawful discharge or refusal to reinstate the employees and notify them in writing that this has been done and that the action will not be used against them in any way.

AMERICAN CONCEPT COMPANY